

without the payment of any consideration when the adjustment offer is approved. An adjustment is not a final settlement until all payments under the adjustment agreement(s) have been made.

Amount of debt. The outstanding balance of the amount loaned including principal and interest plus any outstanding advances, including interest, and subsidy to be recaptured made by the Government on behalf of the borrower.

Cancellation. The final discharge of a debt without any payment on it.

Chargeoff. The writing off of a debt and termination of collection activity without release of personal liability.

Compromise. The satisfaction of a debt or claim by the acceptance of a lump-sum payment of less than the total amount owed on the debt or claim.

Debt forgiveness. For the purposes of servicing Farm Loan Programs loans, debt forgiveness is defined as a reduction or termination of a direct FLP loan in a manner that results in a loss to the Government. Included, but not limited to, are losses from a writedown or writeoff under subpart S of part 1951 of this chapter, debt settlement, after discharge under the provisions of the bankruptcy code, and associated with release of liability. Debt cancellation through conservation easements or contracts is not considered debt forgiveness for loan servicing purposes.

Debtor. The borrower of funds under any of the FmHA or its successor agency under Public Law 103–354 programs. This includes co-signors, guarantors and persons or entities that initially obtained or assumed a loan. Debtor also includes grant recipients.

Farm Loan Programs (FLP) loans. Farm Ownership (FO), Operating (OL), Soil and Water (SW), Economic Emergency (EE), Emergency (EM), Recreation (RL), Special Livestock (SL), Softwood Timber (ST) loans, and/or Rural Housing Loans for farm services buildings (RHF).

Housing programs. All programs and claims arising under programs administered by FmHA or its successor agency under Public Law 103–354 under title V of the Housing Act of 1949.

Servicing office. The FmHA or its successor agency under Public Law 103–354 office that is responsible for the account.

Settlement. The compromise, adjustment, cancellation, or chargeoff of a debt owed to FmHA or its successor agency under Public Law 103–354. The term “Settlement” is used for convenience in referring to compromise, adjustment, cancellation, or chargeoff actions, individually or collectively.

United States Attorney. An attorney for the United States Department of Justice.

[56 FR 10147, Mar. 11, 1991, as amended at 58 FR 21344, Apr. 21, 1993; 62 FR 10157, Mar. 5, 1997]

§§ 1956.55—1956.56 [Reserved]

§ 1956.57 General provisions.

(a) *Application of policies.* All debtors are entitled to impartial treatment and uniform consideration under this subpart. Accordingly, FmHA or its successor agency under Public Law 103–354 personnel charged with any responsibility in connection with debt settlement will adhere strictly to the authorizations, requirements, and limitations in this subpart, and will not substitute individual feelings or sympathies in connection with any settlement.

(b) *Information needed for debt settlement.* A debtor requesting debt settlement must submit complete and accurate information from which a full determination of his/her financial condition can be made. This should include, where applicable, but is not limited to, obtaining verification of employment, providing expense verification, verifying farm program benefits (e.g., Farm Service Agency/Commodity Credit Corporation payments), and examining county records to determine what other assets the debtor has or recently disposed of. When a FLP debtor is continuing to farm, a farm operating plan must be obtained. Also, where a spouse is not a co-debtor the spouse's income will be considered in meeting family living expenses. If it appears that a debtor will not be able to pay in full and the indebtedness is eligible for settlement under this subpart, action should be taken, if possible, to avoid

unnecessary litigation to enforce collection. If the debt is eligible for settlement, the debt settlement authorities of FmHA or its successor agency under Public Law 103-354 should be explained and the privileges thereof extended to the debtor. The information obtained from the debtor should be documented on a debt settlement form.

(c) *Negotiating a settlement.* County Supervisors may approve or reject compromises, adjustments, cancellations, or chargeoffs of SFH debts (to include recapture receivables), regardless of the amount. District Directors and County Supervisors cannot approve other debt settlement actions; therefore, other than SFH debt settlements, they will make no statements to a debtor concerning the action that may be taken upon a debtor's application. In negotiating a settlement, all of the factors which are pertinent to determining ability to pay will be discussed to assist the debtor in arriving at the proper type and terms of a settlement. The present and future repayment ability of a debtor, the factors mentioned in this subpart, and any other pertinent information will be the basis of determining whether the debt should be collected in full, compromised, adjusted, canceled, or charged off. It is impossible in cases eligible for debt settlement to forecast accurately the debtor's future repayment ability over a long period of time; consequently, the period of time during which payments on settlement offers are to be made should not exceed five years. Debtors have the right to make voluntary settlement offers in any amount should they elect to do so. Adjustment offers will not be approved in any case unless there is reasonable assurance that the debtor will be able to make the payments as they become due.

(d) *Disposition of property.* Security may be retained by the debtor only under the conditions specified in § 1956.66 of this subpart.

(e) *Proceeds from the disposal of security prior to approval of a debt settlement offer.* A debtor is not required to have disposed of the security prior to application for debt settlement for a loan to be settled. However, if a debtor has disposed of security prior to applying for

debt settlement, proceeds from the disposed security must first be applied on the debtor's account, irrespective of an application for debt settlement unless the conditions specified in § 1956.66 of this subpart are met.

(f) *County Committee review.* The County Committee will not review proposed settlement action for Housing Program loans. Except for the cancellation of those debts discharged in bankruptcy where there is no remaining security, proposed settlement actions for Farmer Program loans will be reviewed for approval or rejection by the County Committee, and no settlement shall be approved if it is more favorable to the debtor than recommended by the appropriate County Committee.

(g) *Settlement when legal or investigative action has been taken, recommended, or is contemplated.* (1) Debts cannot be settled:

(i) If the matter has been referred either to the Office of the Inspector General (OIG) under § 1962.49(a) of subpart A of part 1962 of this chapter or to Office of the General Counsel (OGC) because of suspected criminal violation, or criminal prosecution is pending because of an illegal act(s) committed by the debtor in connection with the debt or the security for that debt, the procedure outlined in paragraph (g)(3) of this section will be followed, unless, the OIG has declined to investigate the matter or, OGC has advised otherwise, or the case is in the hands of the United States Attorney.

(ii) If a request for referral to the United States Attorney to institute a civil action to protect the interest of the Government has been made by FmHA or its successor agency under Public Law 103-354.

(iii) Except as provided in paragraph (g)(3) of this section, if the case has been referred to the United States Attorney and is not closed.

(2) If a debtor's account is involved in a fiscal irregularity investigation in which final action has not been taken or the account shows evidence that a shortage may exist and an investigation will be requested, the account will not be approved for settlement.

(3) When a claim has been referred to, or a judgment has been obtained by the

United States Attorney, and the debtor requests settlement, the employee in charge of the account will explain to the debtor that the United States Attorney has exclusive jurisdiction over the claim or judgment, that FmHA or its successor agency under Public Law 103-354 has no authority to agree to a settlement offer when the United States Attorney's file is not closed, and that if the debtor wishes to make a compromise or adjustment offer when the United States Attorney's file is not closed, it will be submitted with any related payment directly to the United States Attorney for a decision on the settlement offer.

(h) *Advice from OGC.* State Directors will obtain, when necessary, advice from the OGC in handling proposed debt settlement actions which involve legal problems.

(i) *Settlement of claims against estates.* Settlement of a claim against an estate under the provisions of this subpart will be based on the recovery that may reasonably be expected, taking into consideration such items as the security, costs of administration, allowances of minor children and surviving spouse, allowable funeral expenses, and dower and courtesy rights, and specific encumbrances on the property having priority over claims of the Government.

(j) *Joint debtors.* Settlement may not be approved for one joint debtor unless approved for all debtors. "Joint debtors" includes all parties (individuals, partnerships, joint operators, cooperatives, corporations, estates) who are legally liable for payment of the debt.

(l) Separate and individual adjustment offers from joint debtors must be accepted and processed only as a joint offer. Joint debtors must be advised that all debtors will remain liable for the balance of the debt until all payments due under the joint offer have been made.

(2) A separate Form FmHA or its successor agency under Public Law 103-354 1956-1 will be completed by each debtor, unless the debtors are members of the same family and all necessary financial information on each debtor can be shown clearly on a single application. Separate applications will be sent to the State Office as a unit.

(3) If one debtor applies for compromise, adjustment, or cancellation, or if the debt is to be charged off, and the other debtor(s) is deceased or has received a discharge of the debt in bankruptcy, or the whereabouts of the other debtor(s) is unknown, or it is impossible or impracticable to obtain the signature of the other debtor(s), Form FmHA or its successor agency under Public Law 103-354 1956-1 or Form FmHA or its successor agency under Public Law 103-354 1956-2 (for housing loans) "Cancellation or Charge-off of FmHA or its successor agency under Public Law 103-354 Indebtedness," will be prepared by showing at the top of the form the name of the debtor requesting settlement, following by the name of the other debtor.

For example, "John Doe, joint debtor with Bill Doe, deceased," "John Doe, joint debtor with Sam Doe, discharged in bankruptcy," "John Doe, joint debtor with Mary Doe, impossible or impracticable to obtain signature," as appropriate. In addition to the information concerning settlement of the debt by the applicant, information which justifies settlement of the debt as to the debtor(s) not joining in the application will be shown on Form FmHA or its successor agency under Public Law 103-354 1956-1, or 1956-2 for housing loans.

(k) *Settlement where debtor owes more than one type of Agency loan.* It is not the policy to settle any loan indebtedness of a debtor who is also indebted on another agency loan and who will continue as an active borrower. In such case, the facts will be fully documented in part VIII of Form RD 1956-1.

(l) *No previous debt forgiveness.* Debt settlement may not be approved for any direct Farm Loan Programs loan if the borrower has received debt forgiveness on any other direct loan as defined in § 1956.54 of this subpart.

[56 FR 10147, Mar. 11, 1991, as amended at 58 FR 21344, Apr. 21, 1993; 62 FR 10157, Mar. 5, 1997]

§§ 1956.58—1956.65 [Reserved]

§ 1956.66 Compromise and adjustment of nonjudgment debts.

Nonjudgment debts which the debtor is unable to pay may be compromised